

# Archives Advice No. 2

## Digital Imaging – What happens to the paper record?

### Considerations for Government Officials

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Many government agencies are currently using or considering the use of digital imaging or scanning systems. Agencies often use digital imaging systems to scan paper documents where those documents have to be frequently and quickly accessed by many different staff in the course of business. Governments have embraced digital imaging largely because these advantages help public officials provide more efficient service to their constituents, but records created by public officials must also protect the legal rights of citizens.

Sometimes digital imaging is used in conjunction with the implementation of Electronic Document Management Systems (EDMS) or Electronic Records Management Systems (ERMS). The rationale for this inclusion is that agencies want to consolidate all their information holdings into electronic form so that they do not have to manage both paper and electronic documents and records.

From a legal and record keeping perspective there are many issues to consider when putting in place an imaging or scanning solution.

### Legislation

There are three acts that impact the use of digital imaging for public records:

- The Georgia Records Act (O.C.G.A. § 50-18-91 et. seq.) establishes a state agency's legal responsibility in maintaining their records and creating retention schedules. Each agency, according to O.C.G.A. § 50-18-94(1), must create and preserve records containing adequate and proper documentation of the organization and must furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities. In addition, the agency should properly maintain its records and maintain correct and up-to-date retention schedules reflecting current record keeping requirements and current storage technologies.



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- The Georgia Records Act (O.C.G.A. § 50-18- 99(c) and 102) also establishes the mandate of a local government to treat all public records as public property and to protect such records from alienation, alteration, theft or destruction.
- The Georgia Electronic Records and Signatures Act (O.C.G.A. § 10-12-1 et. seq.) recognizes the legal validity of transactions carried out electronically and permits the recording and retention of information and documents in electronic form. It goes further to define the term “electronic record” as information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.
- The Rules of Evidence (O.C.G.A. § 24-1-1 et. seq.) describe the ways in which documents may be admitted as evidence into a court of law. Public records in particular are included in sections 3 (concerning Hearsay) and 5 (concerning best evidence). According to O.C.G.A. § 24-5-26, any optical image reproduction of any original record may be admissible in evidence in any court of the state and in any proceeding before any board, bureau or department of the state without also producing the original. In other words, it establishes the acceptance of a digital image in place of the original record.

## **Permanent Records**

The longer a record must be retained and the more voluminous it is (especially in paper format), the more desirable is reformatting. In the past, microfilm has been the medium of choice for reformatting these records. Now digital imaging is seen as a readily available option that allows staff access to the records using existing PCs.

Permanent records are those records designated for permanent retention by an agency’s approved retention schedules. Records classified as permanent contain information that for legal, historical, fiscal or administrative reasons needs to be retained forever. Permanent records may be scanned into a system for ease of access and use by agency staff, but the original, if created before 1900, should not be destroyed. Should the agency not want to maintain its older records after scanning, the agency contact the Archives to determine if they are eligible for transfer.

Modern records may be scanned and computer output microfilm (COM) generated from the scanned image as an eye readable backup for the records. After verification of the film, the original records may be destroyed. Off-site storage in a security microfilm vault, such as the one operated by the Georgia Archives, is recommended for the microfilm backup copy.

## **Destruction of Paper Records and Risks**

As stated above, once a record has been scanned and stored electronically, this image substitutes for the original record and the original may be destroyed. If the original paper documents are to be destroyed after scanning there is a risk assessment to be made with regard to records as legal evidence. Without the proper documentation and controls ensuring the maintenance of trustworthy records in the imaging system, the records may not pass the hearsay test to be admitted as evidence in court. This is especially true if the agency cannot

prove that the image has not been tampered with. Thus some questions to consider when assessing the risk of destroying the original are:

- Does the agency rely on these records as evidence in court cases (if so, how frequently)? Agencies involved in frequent court appearances run a higher risk of having evidence questioned by the opposing party based on the methods for records capture and maintenance in order to place in doubt the record's authenticity and reliability.
- Has the system been designed with adequate safeguards to ensure that records held in the system can only be changed in an authorized manner? The agency must be able to show that records have been surrounded by safeguards designed to prevent unauthorized access or alteration of the records. This would include the ability to delete records and the index keys to the records.
- If audit logs of user access to records are being produced and kept by the system, are these logs being kept for the same amount of time as the records themselves (the audit logs could be used to show that the record is what it purports to be in a court)?
- Has the scanning system been designed to ensure that, if required, copies of the paper originals can be produced and certified as being accurate copies of the records?
- Does someone in the agency in a position of authority authorize the copies as true and accurate renditions of the original?

## Technological Obsolescence

Another issue that arises is that of technological obsolescence. Technological obsolescence occurs as new hardware and software are made available. If existing images are not migrated to the new hardware or software, they become unreadable and are essentially destroyed by virtue of this inaccessibility. As an example, how many agencies still maintain their information on 5-inch floppy disks or on 14-inch optical platters? Ensuring that images are accessible for their entire retention period is critical if the original records are to be destroyed. The questions to consider when scanning temporary records where the paper original are to be destroyed are:

- For how long are the records required? Records must be accessible and available for the duration of their required retention period. The longer the record retention the more risk there is that the record may be 'left behind'
- If the retention period is over 10 years it is highly unlikely that the scanning system will still be a viable system after that time. Therefore, has the system been designed so that it is possible to extract the records, the audit logs, and the metadata associated with the records once the system is discarded?
- Has the format of the scanned records been chosen to ensure the longevity of the records? That is, will the format of the records be able to be accessed for as long as the records must be retained? (Proprietary formats often depend on the viability of a single vendor and are *not* recommended.)

Agencies may want to consider the product of Computer Output Microfilm (COM) as a backup or safeguard against the loss of long-term and permanent records.

## **Batching or Filing**

If the requirement is to keep the original paper records, a question arises as to how the paper will be filed. Some agencies establishing a scanning system simply batch the records together once they have been scanned (for example, all the records scanned each day are placed in the same folder and stored at the end of the day). If a paper original is needed, the index in the scanning system is used to locate the record in its batch.

However, there are consequences for agencies that decide to batch records. These should be considered before proceeding. The first consequence is that all the batched records may have to be retained indefinitely if any batch contains a permanent public record that cannot be destroyed. Secondly, because of the many temporary records that will be in any batch, they cannot be transferred to the State Archives – the Archives only accepts permanent records.

Maintaining records in structured or subject files is the preferred option. It enables better management of their disposal (either transfer to the State Archives or destruction when no longer needed) and reduces the impact of the costly and time-consuming process of separating out what can be legally destroyed from what must be retained and ultimately transferred to the Archives.

## **Further Information**

The Georgia Archives is ready to provide assistance to state and local governments that have questions about records—paper, microfilm or electronic. Please call (678) 364-3790.